


Further, claim 98 recites similar limitations to claim 89. As noted above, claim 1 is generic to claim 89. The most notable difference between claim 98 and 89, is that claim 98 recites a method of forming a resistance variable memory element, whereas claim 89 recites a memory element. Claims 99-111 depend from claim 98 and also recite limitations similar to those recited by the provisionally elected claims and/or claims to which claim 1 is generic. Additionally, claims 165-172 recite similar limitations to claims 157-164, respectively. The most notable difference between claims 165-172 and 157-164, is that claims 165-172 recite a method of forming a resistance variable memory element, whereas claim 157-164 recites a memory element.

Section 803 of the M.P.E.P. states in part: "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." (emphasis added). Given the circumstances of this case, it would not be a serious burden for the Examiner to examine all the claims of the application with the claims relating to Species I at this time.

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